

**SETTLEMENT AGREEMENT BETWEEN STATE BOARD OF EMBALMERS AND
FUNERAL DIRECTORS AND MATHEW S. SHANNON**
(Funeral Director and Embalmer Licenses)

The State Board of Embalmers and Funeral Directors (the “Board”) and Mathew S. Shannon (“Licensee” or “Shannon”) enter into this “Settlement Agreement Between State Board of Embalmers and Funeral Directors and Mathew S. Shannon” (the “Settlement Agreement”) to resolve the question of whether Shannon’s funeral director and embalmer licenses should be subject to discipline and, if so, to agree on the appropriate level of discipline to impose on his licenses.

Pursuant to the terms of Section 536.060 RSMo¹, the parties hereto waive the right to a hearing by the Administrative Hearing Commission and the right to a disciplinary hearing before the Board per Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Licensee acknowledges that he understands the various rights and privileges afforded him by law, including the right to a hearing of the charges against him; the right to appear and be represented by legal counsel; the right to have all charges against him proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against him; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against him and, subsequently, the right to a hearing before the Board at which time he may present evidence in mitigation of discipline; and the right to potentially recover attorney's fees incurred in defending this action against his licenses. Being aware of these rights provided to him by operation of law, Licensee knowingly

¹ All statutory references are to the Revised Statutes of Missouri (2000), as supplemented, unless otherwise indicated.

and voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document, as they pertain to him.

Licensee acknowledges that he has received a copy of the investigative report and other documents relied upon by the Board in determining there is cause for discipline, along with citations to law and/or regulations the Board believes were violated and that he has been advised his right to seek legal counsel, at his expense, to assist him with this matter. For the purpose of settling this dispute, Licensee stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Licensee's licenses are subject to disciplinary action by the Board in accordance with the provisions of Chapters 324, 333 and 621, RSMo.

Relevant Statutes and Regulations

1. Section 333.330.2, RSMo, authorizes discipline against funeral director and embalmer licenses and states, in relevant part:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621 against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions, or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled

substance, or for any offense an essential element of which is fraud, dishonesty, or an act of violence;

Joint Stipulation of Facts and Conclusions of Law

The parties agree and stipulate to the following findings of fact and conclusions of law:

2. The Board is an agency of the state of Missouri created and established by Section 333.151, RSMo, for the purposes of executing and enforcing the provisions of Chapter 333, RSMo, and the portions of Chapter 436, RSMo, related to preneed funeral contracts.

3. Shannon is an individual who has registered his address with the Board as 401 Sunset Drive, Lebanon, Missouri 65536.

4. Shannon holds funeral director license number 2005038187 that was and is current and active at all times relevant to this matter.

5. Shannon holds embalmer license number 2006032649 that was and is current and active at all times relevant to this matter.

Conduct Giving Cause for Discipline

6. Shannon submitted to the Board his “Application to Renew Funeral Director June 1, 2014 – May 31, 2015”, (the “Funeral Director Renewal”) that he signed on May 21, 2014 in which he answered “yes” to the following question:

5. Since the last renewal have you been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere of a violation of any federal, state or municipal law, ordinance or rule, whether or not sentence was imposed (include suspended imposition of sentence (SIS)). If yes, attach a full explanation and provide certified court documents (ie: Docket Sheet, Information or Indictment and Final Disposition).

7. Shannon submitted to the Board his "Application to Renew Embalmer June 1, 2014 – May 31, 2015", (the "Embalmer Renewal") that he signed on May 21, 2014 in which he answered "yes" to the following question:

5. Since the last renewal have you been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere of a violation of any federal, state or municipal law, ordinance or rule, whether or not sentence was imposed (include suspended imposition of sentence (SIS)). If yes, attach a full explanation and provide certified court documents (ie: Docket Sheet, Information or Indictment and Final Disposition).

8. Shannon provided the requested documents and his explanation of his conduct that included the following statement: "Since the incident I have completed all the required SATOP and VIP classes I was asked in my plea bargain to receive a (SIS) and I have not touched any Alcohol since that time."

9. On February 6, 2014, Shannon plead and was found guilty of "Dwi – Alcohol (Misdemeanor B RSMo: 577.010) in the case of *State of Missouri v. Mathew Shane Shannon*, Case number 13LA-CR01780 ("*State v. Mathew Shane Shannon*"). The Court sentenced Shannon to a suspended imposition of sentence with two years supervised probation beginning on February 6, 2014.

10. Section 577.010, RSMo, states, in relevant part:

1. A person commits the crime of "driving while intoxicated" if he operates a motor vehicle while in an intoxicated or drugged condition.

2. Driving while intoxicated is for the first offense, a class B misdemeanor. No person convicted of or pleading guilty to the offense of driving while intoxicated shall be granted a suspended imposition of sentence for such offense, unless such person shall be placed on probation for a minimum of two years.

3. Notwithstanding the provisions of subsection 2 of this section, in a circuit where a DWI court or docket created under section 478.007 or other court-ordered treatment program is available, no person who operated a motor vehicle with fifteen-hundredths of one percent or more by weight of alcohol in such person's blood shall be granted a suspended imposition of sentence unless the individual participates and successfully completes a program under such DWI court or docket or other court-ordered treatment program.

Causes for Discipline

11. A funeral director operates a motor vehicle as part of his job duties to provide transportation for decedents and their families. The excessive use of alcohol impairs this ability.

12. The ability to perform the work of embalming a dead human body requires skills impaired by the excessive use of alcohol.

13. The excessive use of alcohol impairs a licensee's ability to perform the work of a funeral director and an embalmer.

14. There is cause to discipline the funeral director and embalmer licenses held by Shannon pursuant to Section 333.330.2(1) and (2), RSMo.

Jointly Stipulated Disciplinary Order

The parties agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of Sections 333.330 and 621.045.3, RSMo:

15. Licensee's licenses to practice as a funeral director and embalmer are hereby placed on **PROBATION** for a period of beginning the effective date of this Settlement Agreement and ending upon the end date the Board receives notice from Licensee of the end of his court ordered probation in *State v. Mathew Shane Shannon* or five years from the effective date of this Settlement Agreement, whichever occurs first (the "Disciplinary Period"). During

the Disciplinary Period, Shannon shall be entitled to practice as a funeral director and embalmer, as defined in Chapters 333 and 436, RSMo, subject to compliance with this Settlement Agreement.

Terms and Conditions of the Disciplinary Period

16. Licensee shall comply with the following terms and conditions during the Disciplinary Period:

- a. Licensee shall keep the Board informed of Licensee's current work and home telephone numbers and addresses. Licensee shall notify the Board in writing within ten (10) business days of any change in this information. If Licensee utilizes e-mail, Licensee shall provide the Board with his current and active e-mail address;
- b. Licensee shall submit written compliance reports to the Board no later than January 1 and July 1 of each year, but no compliance report shall be filed more than 14 days before it is due. These compliance reports shall contain all other information required by this Settlement Agreement and shall be filed on forms supplied by the Board, if Licensee fails to receive the form from the Board, Licensee shall have the duty to contact the Board to request the form. Licensee shall complete each compliance report truthfully, completely and accurately.
- c. Licensee shall comply with all applicable provisions of Chapters 194, 333 and 436, RSMo, all Board regulations and all federal, state and local laws and regulations related to business operations in the funeral and death care industry

including all insurance and security laws applicable to any insurance or annuity used to fund preneed funeral contracts;

- d. Licensee shall engage in no conduct that would give the Board cause to seek authority to discipline from the Administrative Hearing Commission;
- e. Licensee shall meet in person with the Board or any Board representative at any such time and place as required by the Board or its representative upon reasonable notice. Any such meetings shall be at the Board's discretion;
- f. Upon the request by the Board or its representative, Licensee shall immediately submit any and all records requested to show compliance with these terms and conditions;
- g. Licensee shall renew timely all licenses and/or registrations, shall pay timely all fees required for licensure/registration and shall meet all other requirements necessary to maintain all licenses and registrations issued by the Board current and active including not allowing any license to be suspended for failure to comply with any revenue law of the state;
- h. Licensee shall accept and cooperate with unannounced visits from the Board, or its representatives, to monitor compliance with the terms and conditions of the Disciplinary Period;
- i. Licensee shall not serve as the supervisor of any funeral director apprentice or embalmer practicum student or embalmer apprentice without the express written consent of the Board. If Licensee seeks to supervise an apprentice, Licensee shall submit a written request to the Board that includes the name and address of the potential apprentice and a description of Licensee's ability to properly supervise

an apprentice. No such apprenticeship shall commence until the Board has given its consent for Licensee to supervise the apprentice;

- j. Licensee shall not operate a motor vehicle in the conduct of any business of funeral directing unless Licensee holds proper licensure to operate a motor vehicle; and
- k. Licensee shall comply with all terms and conditions of probation imposed in *State v. Mathew Shane Shannon*, as determined by the Court. If the Court finds that Licensee has violated the terms and conditions of his criminal probation, such a finding of violation shall be deemed to be a violation of the terms and conditions of the Disciplinary Period imposed on Shannon's licenses by this Settlement Agreement. Shannon shall report the finding of any such probation violation to the Board within 10 days of the Court's ruling and shall, within 10 days if his receipt of same, include copies of the Court records related to that probation violation.
- l. Licensee shall include with his written reports of compliance the results of any drug and alcohol screenings that occurred during the reporting period.
- m. Licensee shall provide written notice to the Board, along with copies of any court orders or other related documents, documenting the completion of his court ordered probation.

17. The terms of this Settlement Agreement are contractual, legally enforceable and binding, not merely recital. Except as otherwise contained herein, neither this Settlement Agreement nor any of its provisions may be changed, waived, discharged or terminated, except

by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge or termination is sought.

18. Upon the expiration of the Disciplinary Period and successful completion of the the Disciplinary Period, Licensee's licenses shall be fully restored if all other requirements of the law have been satisfied; provided however, that in the event the Board determines that Licensee has violated any term or condition of this Settlement Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may impose additional probation, suspend, revoke, or otherwise lawfully discipline Licensee's license(s).

19. The Board shall enter no order imposing further discipline on Licensee's license(s) without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

20. If the Board determines that Licensee has violated a term or condition of this Settlement Agreement, and that violation would also be actionable in a proceeding before the Administrative Hearing Commission or in a circuit court, the Board may elect to pursue any lawful remedies or procedures afforded to it and is not bound by this Order in its determination of appropriate legal actions concerning such violation(s).

21. If any alleged violation of this Settlement Agreement occurs during the Disciplinary Period, the Board may choose to conduct a hearing on the alleged violation either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation of the terms and conditions of the Disciplinary Period occurred and, if so, may impose further discipline on the license(s) of Licensee. The Board has continuing jurisdiction to hold a hearing determine if a violation of the terms and conditions of the Disciplinary Period occurred.

22. Licensee, together with his heirs and assigns and his attorney(s), do hereby waive, release, acquit and forever discharge the Board, its respective members and any of its employees, agents or attorneys, including any former Board members, employees, agents and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses and compensation, including, but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087 RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this case, its settlement or from the negotiation or execution of its settlement. Licensee acknowledges that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

23. Each party agrees to pay all their own expenses and fees incurred as a result of this matter or any ensuing litigation.

24. Licensee understands that he may, either at the time the Settlement Agreement is signed by all parties or within fifteen (15) days thereafter, submit the Settlement Agreement to the Administrative Hearing Commission for determination that the facts agreed to by the parties constitute grounds for disciplining Licensee's licenses. If Licensee desires the Administrative Hearing Commission to review this Settlement Agreement, Licensee may submit his request to: Administrative Hearing Commission, Truman State Office Building, P.O. Box 1557, Jefferson City, Missouri 65102.

25. If Licensee requests review, this Settlement Agreement shall become effective on the date the Administrative Hearing Commission issues its order finding that the Settlement Agreement sets forth cause for disciplining Licensee's license(s). If Licensee does not request

review by the Administrative Hearing Commission, the Settlement Agreement goes in to effect 15 days after the document is signed by the Executive Director of the Board.


26. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 324, RSMo.

Licensee


Mathew S. Shannon


Dated: 1-7-2015

Board


Sandy Sebastian
Executive Director
State Board of Embalmers and Funeral Directors

Dated: 1-27-2015

Approved:


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COUNSEL FOR LICENSEE

COUNSEL FOR THE BOARD

EFFECTIVE DATE
2-11-2015
STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS